



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-03-2025

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**THE HONOURABLE DR JUSTICE ANITA SUMANTH
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**OSA No. 99 of 2025
and CMP NO. 5947 OF 2025**

1. K. Veeraraghavan
No.48/62, Nelson Manickam Road,
Aminjikarai, Chennai 29. and another

2. K. Magesh
No.48/62, Nelson Manickam Road,
Aminjikarai, Chennai 29.

Appellant(s)

Vs

1. G. Uma Devi
W/o. Gajendran, No.16/2, Brindavan
Colony, Gandhi Road, Choolaimedu 600
094.

2.Revathi Mohan
W/o. Mohan, No.608, H Block, 16 th
Street, 16th Main Road, Anna Nagar West,
Chennai 40.

3.Kalavathi Sethuraman
48/62, Nelson Manickam Road,
Aminjikarai, Chennai 29.

4.Nirmala Sathyanarayanan
No.19/A, Rangabashyam Street, West
Saidapet, Chennai 15.



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Respondent(s)

PRAYER: Appeal filed under Clause 15 of the Letters Patent read with Order 36 Rule 1 of the O.S.Rules to set aside the order dated 27.01.2025 in Appln.No.5542 of 2024 in OS No.791 of 2014.

For Appellant(s): Mr. V Subramani

For Respondent(s): Mr.Pl.Narayanan, Senior Coumnsel
For Mr. E. Hariharan, For R1 And
R2

JUDGMENT

(Judgment of the Court was delivered by Anita Sumanth J.)

The appellants are D3 and D4 in Suit. C.S.No.71 of 2014 has been filed by the respondents in this appeal seeking partition of the suit properties, rendition of accounts and a permanent injunction restraining the defendants therein from in any manner alienating the suit properties.

2. Pending suit, the present appellants have filed an application in A.No.5542 of 2024 seeking rejection of a xerox copy of the document marked as Ex.P.16. The trajectory of the matter has been recorded by the learned Judge at paragraphs 2 and 3 of order dated 21.01.2025, which is impugned in this appeal.

3. In the impugned order, it is stated that the evidence in Suit was closed in 2018. Thereafter, two applications in A.Nos.766 and 767 of 2019 had been filed by the plaintiffs seeking re-opening of the evidence and recall of witness. Though the applications were dismissed, intra-court appeals in O.S.A.Nos.98 and 99 of 2019



were preferred before the Division Bench, which came to be allowed on 10.03.2020, pursuant to which order, evidence was re-opened, PW1 recalled and evidence adduced.

4. Thereafter, another two applications in A.Nos.857 and 858 of 2024 have been filed seeking re-opening of evidence and recalling of DW1 to adduce rebuttal evidence which came to be allowed on 21.02.2024. In the course of cross-examination, learned counsel for the plaintiffs had sought to mark the offending document, i.e., Ex.P.16, which purports, according to the appellants, to be a declaration made by the father of the parties to the Suit.

5. The learned Judge has recorded that even though the counsel for the defendants wanted to peruse the document before marking the same as exhibit, learned Additional Master II did not permit him to peruse the same and directed that the same be marked as Ex.P.16. The objections of the appellants appear to be that the document is only a xerox copy, has been signed solely by his father and has not been signed by other necessary parties.

6. In summary, the objections appear to be targeted both towards veracity of the document as well as the contents thereof and hence the document was sought to be rejected, even at that stage. The document has, however, been marked taking note of the objections put forth by the present appellants and it is thereafter that A.No.5542 of 2024 was filed by D3 and D4, present appellants, seeking rejection of the document.



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7. We have heard Mr.V.Subramani, learned counsel for the appellants and Mr.P.L.Narayanan, learned Senior Counsel for Mr.E.Hariharan, learned counsel, who had entered appearance for the respondents on caveat.

8. On a careful perusal of impugned order dated 27.01.2025, we note that the interests of the appellants have not been compromised in any way insofar as, in paragraph 7 of the order, the learned Judge has made it clear that the veracity as well as the validity of the document would be an issue to be gone into by the trial court in the course of arguments. We reiterate the conclusion of the learned Judge which would only serve to ensure that the objections of the appellants shall be taken note of at that stage.

9. Needless to say, the marking of the document, particularly in the course of cross examination, would be near automatic feature, of course subject to any objection that may be raised by the other side.

10. The appellants have relied on the judgment of the Supreme Court in *G.M.Shahul Hameed V. Jayanthi R. Hegde* (AIR 2024 SC 3339), particularly paragraph 15, wherein reference has been made to the previous judgment of the Supreme Court in *Javer Chand and others V. Pukhraj Surana* (AIR 1961 SC 1655).

11. Relying on the aforesaid judgments, learned counsel would seek to adduce the argument that where the objection of admissibility of a document is raised, it would have to be decided then and there, at that very juncture and cannot be



postponed for consideration at a subsequent juncture.

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12. We note that the objection that was raised in that case relates to the stamping of a document that was sought to be marked. It was in that context that the Court had held that the question of stamping is to be decided without postponement, then and there, when the document was tendered in evidence.

13. This ratio need not be extended to other documents in respect of which the consistent practice has been to mark the document once tendered in evidence, taking into account the objection of the parties, which objection has to be considered at the proper and appropriate juncture.

14. In fact, at paragraph 16 of the judgment in *G.M.Shahul Hameed* (supra) reference was made to the judgment in *Rattan V. Bajran Lal* (AIR 1978 SC 1393), where, even in the context of an objection raised towards admissibility of a document on the ground that it was not duly stamped, three Hon'ble Judges of the Supreme Court have held as follows:

'6. When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objects in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In



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such a situation at a later stage before the suit is finally disposed of it would none-the-less be obligatory upon the court to decide the objection.....'

15. In light of the aforeasid detailed discussion, we find that there is no error in the order impugned before us and the interests of the parties have been duly taken note of in disposal of the application.

16. This Original Side Appeal and the connected Miscellaneous Petition are dismissed. No costs.

[A.S.M.,J] [C.K.,J]
14.03.2025

Index:Yes
Speaking order
Internet:Yes
Neutral Citation:Yes
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